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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,364	01/27/2004	Emanuele Terminella	.012902	1571
7590	12/01/2004			
KEISLING PIEPER & SCOTT PLC			EXAMINER	
Suite 217			DURAND, PAUL R	
1 East Center Street			ART UNIT	PAPER NUMBER
Fayetteville, AR 72701			3721	

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/765,364	TERMINELLA ET AL.
	Examiner Paul Durand	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 January 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04/04.

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato et al (US 4,633,654) in view of Sandberg (US 4,308,710).

In regard to claims 1,2 and 4, Sato discloses the invention substantially as claimed including first and second clamshell portions 3 and 3', with a lip portion 7, which maintains the bag in an open position during evacuation, forming an airtight seal with seals 8 and supplying compressed air through line 6 to evacuate a bag (see Figs 3-5 and C2,L37 – C3,L41). What Sato does not disclose is a vacuum means to hold the bag neck open during evacuation. However, Sandberg teaches that it is old and well known in the art to provide a curved lip portion 52 with passages 49 that pull a vacuum to hold bag 43 open at the neck during a filling and sealing stage for the purpose of sealing and evacuating a bag without contaminating the surrounding environment (see Figs. 4, 5 and C4,L42-53). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Sato with the vacuum retention means as taught by Sandberg for the

purpose of sealing and evacuating a bag without contaminating the surrounding environment.

In regard to claim 3, Sato discloses the invention substantially as claimed including rotating axle (no number but generally near 13), swing arm in the form of driving arm 13 and first and second locking arms 10 (see Fig.2 and C2,L65 – C3,L4).

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson, Di Bernardo, Saylor, Ylvisaker et al, Natterer, Bullock et al and Carcano have been cited to show device having similar structure.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
November 24, 2004



EUGENE KIM
PRIMARY EXAMINER